

(2)
No. 93-1660

Supreme Court, U.S.
FILED

JUL 8 1994

OFFICE OF THE CLERK

In The
Supreme Court of the United States
October Term, 1993

STATE OF ARIZONA,
Petitioner,

vs.

ISAAC EVANS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF ARIZONA

BRIEF
AMICI CURIAE
OF
AMERICANS FOR
EFFECTIVE LAW ENFORCEMENT, INC.,
JOINED BY
THE INTERNATIONAL ASSOCIATION OF
CHIEFS OF POLICE, INC.,
THE NATIONAL DISTRICT
ATTORNEYS ASSOCIATION, INC., AND THE
NATIONAL SHERIFFS' ASSOCIATION,
IN SUPPORT OF THE PETITIONER.

(List of Counsel on Inside Front Cover)

12/17

OF COUNSEL:

ROY C. KIME, ESQ.

International Association
of Chiefs of Police
515 N. Washington St.
Alexandria, Virginia 22314

RICHARD M. WEINTRAUB, ESQ.

National Sheriffs' Association
1450 Duke Street
Alexandria, Virginia 22314

WILLIAM C. O'MALLEY, ESQ.

District Attorney
Brockton, Massachusetts
President
National District Attorneys
Association
99 Canal Center Plaza
Suite 510
Alexandria, Virginia 22314

BERNARD J. FARBER, ESQ.

5009 West Windsor
Chicago, Illinois 60630-3926

Counsel for Amici Curiae

FRED E. INBAU, ESQ.

John Henry Wigmore Professor
of Law, Emeritus
Northwestern University
School of Law
Chicago, Illinois 60611

WAYNE W. SCHMIDT, ESQ.

Executive Director
Americans for Effective
Law Enforcement, Inc.
5519 N. Cumberland Avenue
Suite 1008
Chicago, Illinois 60656

JAMES P. MANAK, ESQ.

Counsel of Record
421 Ridgewood Avenue,
Suite 100
Glen Ellyn, Illinois
60137-4900

Tele and Fax: (708) 858-6392

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
BRIEF OF AMICI CURIAE	1
INTEREST OF AMICI CURIAE	2
ARGUMENT	4
THE EXCLUSIONARY RULE DOES NOT RE- QUIRE SUPPRESSION OF EVIDENCE WHICH HAS BEEN SEIZED INCIDENT TO AN ARREST BASED UPON A COMPUTER RECORD OF AN OPEN WARRANT THAT HAD ACTUALLY BEEN QUASHED EARLIER.	4
CONCLUSION	8

TABLE OF AUTHORITIES

Cases	Page
<i>Beck v. Ohio</i> , 379 U.S. 89 (1964)	5
<i>Draper v. United States</i> , 358 U.S. 307 (1959)	5
<i>Florida v. Royer</i> , 460 U.S. 491 (1983)	5
<i>Michigan v. Tucker</i> , 417 U.S. 433 (1974)	6
<i>State v. Evans</i> , 866 P.2d 869 (Az. 1994)	4
<i>United States v. Leon</i> , 468 U.S. 897 (1984)	4, 6, 7
<i>United States v. Calandra</i> , 414 U.S. 338 (1974)	6

In The
Supreme Court of the United States
 October Term, 1993

STATE OF ARIZONA,
Petitioner,
 vs.

ISAAC EVANS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO
 THE SUPREME COURT OF ARIZONA

BRIEF
 AMICI CURIAE
 OF
 AMERICANS FOR
 EFFECTIVE LAW ENFORCEMENT, INC.,
 JOINED BY
 THE INTERNATIONAL ASSOCIATION OF
 CHIEFS OF POLICE, INC.,
 THE NATIONAL DISTRICT
 ATTORNEYS ASSOCIATION, INC., AND THE
 NATIONAL SHERIFFS' ASSOCIATION,
 IN SUPPORT OF THE PETITIONER.

This Brief is filed pursuant to Rule 37 of the United States Supreme Court. Consent to file has been granted by respective Counsel for the Petitioner and Respondent. The letters of consent have been filed with the Clerk of this Court, as required by the Rules.

INTEREST OF AMICI CURIAE

Americans for Effective Law Enforcement, Inc. (AELE), as a national not-for-profit citizens organization, is interested in establishing a body of law making the police effort more effective, in a constitutional manner. It seeks to improve the operation of the police function to protect our citizens in their life, liberties, and property, within the framework of the various State and Federal Constitutions.

AELE has previously appeared as *amicus curiae* over eighty-five times in the Supreme Court of the United States and over thirty-five times in other courts, including the Federal District Courts, the Circuit Courts of Appeal and various state courts, such as the Supreme Courts of California, Illinois, Ohio, and Missouri.

The International Association of Chiefs of Police, Inc. (IACP), is the largest organization of police executives and line officers in the world, consisting of more than 14,000 members in 72 nations. Through its programs of training, publications, legislative reform, and *amicus curiae* advocacy, it seeks to make the delivery of vital police services more effective, while at the same time protecting the rights of all our citizens.

The National District Attorneys Association, Inc. (NDAA), is a nonprofit corporation and the sole national organization representing local prosecuting attorneys in America. Since its founding in 1950, NDAA's programs of education, training, publication, and *amicus curiae* activity have carried out its guiding purpose of reforming the criminal justice system for the benefit of all of our citizens.

The National Sheriffs' Association (NSA), is the largest organization of sheriffs and jail administrators in America,

consisting of over 40,000 members. It conducts programs of training, publications, and related educational efforts to raise the standard of professionalism among the Nation's sheriffs and jail administrators. While it is interested in the effective administration of justice in America, it strives to achieve this while respecting the rights guaranteed to all under the Constitution.

Amici are national professional associations representing the interests of law enforcement agencies at the state and local levels. Our members include: (1) law enforcement officers and law enforcement administrators who are charged with the responsibility of making and overseeing arrests within the bounds of the law, and (2) prosecutors and police legal advisors who, in their criminal jurisdiction capacity, are called upon to advise law enforcement officers and administrators in connection with such matters and to prosecute cases involving evidence obtained as a result of arrests and searches conducted incident thereto.

Because of the relationship with our members, and the composition of our membership and directors—including active law enforcement administrators and counsel—we possess direct knowledge of the impact of the ruling of the court below, and we wish to impart that knowledge to this Court.

ARGUMENT

THE EXCLUSIONARY RULE DOES NOT REQUIRE SUPPRESSION OF EVIDENCE WHICH HAS BEEN SEIZED INCIDENT TO AN ARREST BASED UPON A COMPUTER RECORD OF AN OPEN WARRANT THAT HAD ACTUALLY BEEN QUASHED EARLIER.

The Supreme Court of Arizona, *State v. Evans*, 866 P.2d 869 (Az. 1994), ruled that the Fourth Amendment exclusionary rule applies to evidence obtained during a search incident to an arrest based upon an erroneous computer record that did not reflect the fact that the warrant for the arrest of the defendant had been quashed. It ruled that even assuming that the error in a computer record was the fault of the court rather than the police, the good faith exception to the exclusionary rule, *United States v. Leon*, 468 U.S. 897 (1984), would not apply to the situation in the present case.

Amici will not repeat the able legal arguments made by the State of Arizona in this issue. We note initially that there are at least two ways of viewing the case: (1) as a situation involving no violation of the Fourth Amendment and, therefore, a case not appropriate for application of the good faith exception adopted by this Court in *Leon*, *supra*, or (2) as a situation involving a technical violation of the Fourth Amendment and appropriate for application of the good faith exception adopted in *Leon*. In either situation we believe the court below was in error and should be reversed.

It would seem difficult to maintain that the officer did not have objectively based probable cause to make an arrest at

the time he confronted the defendant on the street, based upon the totality of the circumstances known to him *at the moment of arrest*. The officer had official information indicating that an outstanding warrant for defendant's arrest existed. This was ample probable cause for him to make an arrest. *Florida v. Royer*, 460 U.S. 491 (1983); *Beck v. Ohio*, 379 U.S. 89 (1964); *Draper v. United States*, 358 U.S. 307 (1959). Indeed, if the officer had not made an arrest based upon the official information good on its face as conveyed to him, he would have been derelict in his duty and could have been subjected to disciplinary action by his employer.

Amici submit that the officer made a valid arrest based upon probable cause and that a contrary rule would work immeasurable damage to the criminal justice system. We point out from our perspective as law enforcement administrators and counsel, that if an officer were required to go behind official sources of information in the context of this case (involving computer records of warrants of arrest and the actions of multiple judicial and clerical actors), officers in many cases would not be able to act and arrests could not and would not be made.

It would often be impossible for an officer to go behind such sources of official information to see whether every official actor in the chain of action had done his or her job correctly. An arrest would simply not be possible if the officer were responsible for verifying every piece of information coming to him through official channels.

The arrest would not be made, the suspect would be freed on the street or in the stationhouse, and dangerous suspects would return to the streets free to wreak havoc on innocent victims. Certainly the public would not be served by a rule allowing misdemeanants or felons to slip through the hands

of law enforcement officers who have neither the time nor the ability to verify sources of official computer information at the street level.

To require an officer to take a person into custody in order to manually check out sources of official information at the stationhouse pertaining to computer records, would involve a technical arrest with the potential for civil liability for the officer and his or her agency if the manual check determined that there was an error in the computer records. Police officers should not be subjected to such potential civil liability risks.

We submit that the Court, based upon ample and long-standing precedent, should find that a valid, probable cause arrest was made in this case and that the exclusionary rule simply does not apply.

If, *arguendo*, the rule *does* apply then *amici* submit that the case presents an appropriate application for the good faith exception adopted in *Leon, supra*. This Court has made it clear that the exclusionary rule is not a personal right of the defendant but, rather, hinges upon the deterrent effect of the rule in preventing police violations of constitutional rights. *United States v. Leon, supra*; *Michigan v. Tucker*, 417 U.S. 433 (1974); *United States v. Calandra*, 414 U.S. 338 (1974). If the arresting officer has committed no error attributable to him or other police actors—as persuasively appears from the record in this case—then application of the exclusionary rule can have no possible deterrent effect upon the police. *Amici* submit that the good faith exception was fashioned precisely for this type of case—where there has been no error attributable to the police and the officer has acted in objective good faith based upon the totality of the circumstances.

The exception adopted in *Leon, supra*, we submit, has been proved workable and beneficial, and has not deprived defendants of their constitutional protections. The rule should be extended to arrest as well as searches, whether with or without a warrant. The underlying rationale for the exception and the rule itself—deterrence of police misconduct—is well served by a broad-based application to all police action falling within the purview of the Fourth Amendment.¹

¹ *Amicus* Americans for Effective Law Enforcement (AELE) interprets the record in this case as indicating that a court employee was the source of the computer error. AELE does not urge extension of the good faith exception to instances where law enforcement personnel cause the error.

CONCLUSION

Amici urge this Court to reverse the decision of the court below on the basis of the precedents of this Court and sound judicial policy.

Respectfully submitted,

OF COUNSEL:

ROY C. KIME, ESQ.

International Association
of Chiefs of Police
515 N. Washington St.
Alexandria, Virginia 22314

RICHARD M. WEINTRAUB, ESQ.

National Sheriffs' Association
1450 Duke Street
Alexandria, Virginia 22314

WILLIAM C. O'MALLEY, ESQ.

District Attorney
Brockton, Massachusetts
President
National District Attorneys
Association
99 Canal Center Plaza
Suite 510
Alexandria, Virginia 22314

BERNARD J. FARBER, ESQ.

5009 West Windsor
Chicago, Illinois 60630-3926

FRED E. INBAU, ESQ.

John Henry Wigmore Professor
of Law, Emeritus
Northwestern University
School of Law
Chicago, Illinois 60611

WAYNE W. SCHMIDT, ESQ.

Executive Director
Americans for Effective
Law Enforcement, Inc.
5519 N. Cumberland Avenue
Suite 1008
Chicago, Illinois 60656

JAMES P. MANAK, ESQ.

Counsel of Record
421 Ridgewood Avenue,
Suite 100
Glen Ellyn, Illinois
60137-4900

Tele and Fax: (708) 858-6392

Counsel for Amici Curiae